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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,827	07/01/2003	Sandor Nagy	88-2040A	3050
24114	7590	07/26/2004	EXAMINER	
LYONDELL CHEMICAL COMPANY			LEE, RIP A	
3801 WEST CHESTER PIKE			ART UNIT	
NEWTOWN SQUARE, PA 19073			PAPER NUMBER	
			1713	
DATE MAILED: 07/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/611,827	<b>Applicant(s)</b> NAGY ET AL.	
	<b>Examiner</b> Rip A. Lee	<b>Art Unit</b> 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 16-18 is/are rejected.
- 7) ☒ Claim(s) 12-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                   |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                              | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-5, 8-11, and 16-18 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. 2003/0004052 to Lynch *et al.*

Lynch *et al.* teaches a process for polymerizing olefins in the presence of a catalyst comprising a Gp 3-10 transition metal and at least one indenoidolyl ligand bonded to the metal, an activator which is a reaction product of an alkylaluminum compound and an organoboronic acid, and an aluminum phosphate support (claim 13). Olefins include ethylene and C<sub>3</sub>-C<sub>20</sub>  $\alpha$ -olefins as well as ethylene in conjunction with C<sub>3</sub>-C<sub>20</sub>  $\alpha$ -olefins (paragraph [0037]). Polymerizations occur at 70 °C (for instance, example 3); slurry and gas phase polymerizations are contemplated (paragraph [0038]). Claim 4 shows the structure of the indenoidolyl ligand, and it corresponds directly to that featured in present claim 11. Example 3 shows one variation of the polymerization process in which the activator (*i*Bu<sub>3</sub>Al) is added directly to the reactor followed by addition of supported catalyst. Alternatively, metal complex and activator are added to support concurrently (example 2). A third permutation can be seen in comparative example 7 in which activator and support are combined first, followed by addition of organometallic complex. As such, all aspects of the present claims are taught adequately in the prior art.

5. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2003/0004052 to Lynch *et al.* in view of U.S. Patent No. 6,184,169 to Sartain.

The discussion of the disclosures of the prior art of Lynch *et al.* from the previous paragraph of this office action is incorporated here by reference. Although use of aluminum phosphate support is claimed, there is no information regarding the nature of the support material. Sartain teaches that aluminum phosphate support has a pore volume of 0.7-1.25 cm<sup>3</sup>/g with a surface area of 200-350 m<sup>2</sup>/g. With a rough empirical formula of AlPO<sub>4</sub>, the mole ratio of phosphorus to aluminum lies in the range of 0.70-0.95 (see col. 9, lines 30-39). It would have been obvious to one having ordinary skill in the art to use the aluminum phosphate support shown in Sartain for the process shown in Lynch *et al.* because this particular aluminum phosphate has been shown to work sufficiently as a support material, and because the support has been disclosed in the prior art, one of ordinary skill in the art would have expected such a material to produce a useful catalyst.

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6. Claims 12-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

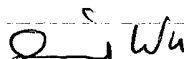
Art Unit: 1713

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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July 19, 2004



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